

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMALL BAKER,

Plaintiff,

V.

JERALD GRANT, et al.,

## Defendants.

Case No. C17-1678-RSL-MAT

ORDER ON PLAINTIFF'S MOTION  
TO EXTEND TIME AND CONDUCT  
ADDITIONAL DISCOVERY

This is a 42 U.S.C. § 1983 prisoner civil rights action. Defendants' motion for summary judgment is noted for March 13, 2020. (Dkt. 127.) On March 9, 2020, plaintiff filed a motion requesting an extension of time until April 1, 2020, to oppose the motion. (Dkt. 133.) Plaintiff asks for leave to conduct additional discovery, specifically to request the production of documents and to serve approximately five interrogatories. (*Id.*) He does not explain what discovery he seeks or why he needs it. (*Id.*) Defendants do not oppose an extension of time but they do object to plaintiff's request to conduct additional discovery. (Dkt. 134.) The deadline has already passed.

The Court finds good cause based on plaintiff's health challenges to grant him an extension of time to file his response to the motion for summary judgment. Plaintiff has not,

1 however, justified his request for additional discovery. Federal Rule of Civil Procedure 56(d)  
2 provides: “If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot  
3 present facts essential to justify its opposition, the court may: . . . (2) allow time to obtain  
4 affidavits or declarations or to take discovery . . . .” Fed. R. Civ. P. 56(d)(2). As the Ninth  
5 Circuit has explained:

6 Rule 56(d) provides “a device for litigants to avoid summary judgment when they  
7 have not had sufficient time to develop affirmative evidence.” *United States v.*  
8 *Kitsap Physicians Serv.*, 314 F.3d 995, 1000 (9th Cir. 2002). A party seeking  
9 additional discovery under Rule 56(d) must “explain what further discovery  
would reveal that is ‘essential to justify [its] opposition’ to the motion[ ] for  
summary judgment.” *Program Eng’g, Inc. v. Triangle Publ’ns, Inc.*, 634 F.2d  
1188, 1194 (9th Cir. 1980) (first alteration in original).

10 This showing cannot, of course, predict with accuracy precisely what further  
11 discovery will reveal; the whole point of discovery is to learn what a party does  
12 not know or, without further information, cannot prove. *See, e.g., Pac. Fisheries*  
13 *Inc. v. United States*, 484 F.3d 1103, 1111 (9th Cir. 2007) (“[T]he purpose of  
14 discovery is to aid a party in the preparation of its case . . . .”); Fed. R. Civ. P.  
15 26(b) advisory committee’s note to 1946 amendment) (“The purpose of discovery  
16 is to allow a broad search for facts . . . or any other matters which may aid a party  
17 in the preparation or presentation of his case.”). But for purposes of a Rule 56(d)  
18 request, the evidence sought must be more than “the object of pure speculation.”  
19 *California v. Campbell*, 138 F.3d 772, 779-80 (9th Cir. 1998) (citation omitted).  
20 A party seeking to delay summary judgment for further discovery must state  
21 “what other specific evidence it hopes to discover [and] the relevance of that  
22 evidence to its claims.” *Program Eng’g*, 634 F.2d at 1194 (emphasis added). In  
23 particular, “[t]he requesting party must show [that]: (1) it has set forth in affidavit  
form the specific facts it hopes to elicit from further discovery; (2) the facts  
sought exist; and (3) the sought-after facts are essential to oppose summary  
judgment.” *Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp.*, 525  
F.3d 822, 827 (9th Cir. 2008) (emphasis added).

20 *Stevens v. Corelogic, Inc.*, 899 F.3d 666, 678 (9th Cir. 2018). Plaintiff’s request fails to meet  
21 these standards. He has not submitted an affidavit explaining the specific facts he hopes to elicit  
22 through further discovery, why he believes these facts exist, or why these facts are essential to  
23 oppose defendants’ motion for summary judgment.

1       Based on the foregoing, the Court ORDERS:

2       (1)      Plaintiff's motion to extend time (Dkt. 133) is GRANTED in part and DENIED in  
3                   part.

4       (2)      The motion is GRANTED as to plaintiff's request for an extension of time to file  
5                   an opposition to defendants' motion for summary judgment. Plaintiff shall file any opposition  
6                   brief and supporting evidence on or before **Monday, April 6, 2020**. Defendants may file a reply  
7                   on or before **Friday, April 10, 2020**.

8       (3)      Plaintiff's motion is DENIED as to his request to conduct additional discovery.

9       (4)      The Clerk is directed to RE-NOTE defendants' motion for summary judgment  
10                   (Dkt. 127) for April 10, 2020, and to send copies of this order to the parties and to the Honorable  
11                   Robert S. Lasnik.

12                   Dated this 17th day of March, 2020.

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15                   Mary Alice Theiler  
16                   United States Magistrate Judge